(Original Signature of Member)
117TH CONGRESS H.R.
To establish an inspections regime for the Bureau of Prisons, and for other purposes.
IN THE HOUSE OF REPRESENTATIVES
Mrs. McBath introduced the following bill; which was referred to the Committee on

A BILL

To establish an inspections regime for the Bureau of Prisons, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Federal Prison Over-
- 5 sight Act".

1	SEC. 2. CREATION OF AN INSPECTIONS REGIME FOR THE
2	BUREAU OF PRISONS.
3	(a) In General.—Section 8E of the Inspector Gen-
4	eral Act of 1978 (5 U.S.C. App.) is amended by adding
5	at the end the following:
6	"(e) Inspections Regime.—
7	"(1) Definitions.—In this subsection:
8	"(A) Bureau.—The term 'Bureau' means
9	the Bureau of Prisons.
10	"(B) COVERED FACILITY.—The term 'cov-
11	ered facility'—
12	"(i) means a correctional facility oper-
13	ated by the Bureau; and
14	"(ii) does not include a State, local,
15	Tribal, territorial, or private correctional
16	facility at which Federal prisoners are
17	housed under an agreement with the Bu-
18	reau.
19	"(C) Family member.—The term 'family
20	member' includes a grandparent, parent, sib-
21	ling, spouse or domestic partner, child, aunt,
22	uncle, cousin, niece, nephew, grandchild, or any
23	other person related to an individual by blood,
24	adoption, marriage, civil union, or a romantic
25	or fostering relationship.

1	"(D) Inspector general.—The term
2	'Inspector General' means the Inspector Gen-
3	eral of the Department of Justice.
4	"(E) Ombuds-The term 'Ombuds-
5	man' means the Ombudsman established under
6	paragraph (3)(A).
7	"(F) Representative of an incarcer-
8	ATED PERSON.—The term 'representative of an
9	incarcerated person' includes paid or unpaid
10	legal counsel or any other person or entity cho-
11	sen by an incarcerated person to represent the
12	interests of the incarcerated person.
13	"(G) Staff.—The term 'staff' means em-
14	ployees and contractors of the Bureau.
15	"(2) Inspections of covered facilities by
16	THE INSPECTOR GENERAL.—
17	"(A) Establishment of inspections
18	REGIME.—
19	"(i) IN GENERAL.—The Inspector
20	General shall conduct periodic inspections
21	of covered facilities pursuant to the re-
22	quirements of this subsection.
23	"(ii) Access to covered facili-
24	TIES.—The Attorney General shall ensure
25	that the Inspector General has access to

1	any covered facility, including the incarcer-
2	ated people, detainees, staff, bargaining
3	unit representative organization, and any
4	other information that the Inspector Gen-
5	eral determines is necessary to carry out
6	the provisions of this subsection.
7	"(iii) Notice of inspections.—An
8	inspection of a covered facility under this
9	subsection may be announced or unan-
10	nounced.
11	"(B) Inspection criteria.—An inspec-
12	tion of a covered facility under this subsection
13	may include an assessment of the following:
14	"(i) The policies, procedures, and ad-
15	ministrative guidance of the facility.
16	"(ii) The conditions of confinement.
17	"(iii) Working conditions for staff.
18	"(iv) The availability of evidence-
19	based recidivism reduction programs and
20	productive activities, as such terms are de-
21	fined in section 3635 of title 18, United
22	States Code, and the application of earned
23	time credits pursuant to section 3632 of
24	title 18, United States Code.

1	"(v) The policies and procedures re-
2	lating to visitation.
3	"(vi) The policies and practices relat-
4	ing to the use of single-cell confinement,
5	administrative segregation, and other
6	forms of restrictive housing.
7	"(vii) The medical facilities and med-
8	ical and mental health care, programs, pro-
9	cedures, and policies, including the number
10	and qualifications of medical and mental
11	health staff and the availability of gender-
12	appropriate and trauma-responsive care for
13	incarcerated people.
14	"(viii) Medical services and mental
15	health resources for staff.
16	"(ix) Lockdowns at the facility.
17	"(x) Credible allegations of incidents
18	involving excessive use of force, completed,
19	attempted, or threatened violence, includ-
20	ing sexual violence, or misconduct com-
21	mitted against incarcerated people.
22	"(xi) Credible allegations of incidents
23	involving completed, attempted, or threat-
24	ened violence, including sexual violence,
25	committed against staff.

1	"(xii) Adequacy of staffing at the cov-
2	ered facility, including the number and job
3	assignments of staff, the ratio of staff to
4	inmates at the facility, the staff position
5	vacancy rate at the facility, and the use of
6	overtime, mandatory overtime, and aug-
7	mentation.
8	"(xiii) Deaths or serious injuries of
9	incarcerated people or staff that occurred
10	at the facility.
11	"(xiv) The existence of contraband
12	that jeopardizes the health or safety of in-
13	carcerated people or staff, including inci-
14	dent reports, referrals for criminal pros-
15	ecution, and confirmed prosecutions.
16	"(xv) Access of incarcerated people
17	to—
18	"(I) legal counsel, including con-
19	fidential meetings and communica-
20	tions;
21	"(II) discovery and other case-re-
22	lated legal materials; and
23	"(III) the law library at the cov-
24	ered facility.

1	"(xvi) Any aspect of the operation of
2	the covered facility that the Inspector Gen-
3	eral determines to be necessary over the
4	course of an inspection.
5	"(C) Inspection schedule.—An inspec-
6	tion of a covered facility under this subsection
7	shall be conducted on a schedule based on the
8	combined risk score of the covered facility as
9	described in subparagraph (E) and the fol-
10	lowing considerations:
11	"(i) Higher risk facilities shall receive
12	more frequent inspections.
13	"(ii) The Inspector General shall re-
14	evaluate the combined risk score method-
15	ology and inspection schedule periodically
16	and may alter 1 or both to ensure that
17	higher risk facilities are identified and re-
18	ceiving the appropriate frequency of in-
19	spection.
20	"(D) Report.—
21	"(i) In General.—Upon completion
22	of an inspection of a covered facility under
23	this subsection, or a group of inspections
24	that assess the same or similar issues at
25	more than 1 facility, the Inspector General

1	shall produce a report to be made available
2	to the Attorney General, the Committee on
3	the Judiciary of the Senate, the Committee
4	on the Judiciary of the House of Rep-
5	resentatives, employee representative orga-
6	nizations, and the public, that addresses 1
7	or more of the following topics:
8	"(I) A characterization of the
9	conditions of confinement and work-
10	ing conditions, including a summary
11	of the inspection criteria reviewed
12	under clauses (ii) and (iii) of subpara-
13	graph (B).
14	"(II) Recommendations made to
15	the covered facility to improve safety
16	and conditions within the facility, in-
17	cluding recommendations regarding
18	staffing.
19	"(III) A recommended timeline
20	for the next inspection and assess-
21	ment, which shall not limit the au-
22	thority of the Inspector General to
23	perform additional inspections and as-
24	sessments, announced or unan-
25	nounced.

1	"(IV) Any other issues or mat-
2	ters identified during the inspection of
3	the facility or facilities.
4	"(ii) Consultation with stake-
5	HOLDERS.—In developing the rec-
6	ommendations described in clause (i), the
7	Inspector General may consult with stake-
8	holders, including employee representative
9	organizations.
10	"(E) RISK SCORE.—Not later than 18
11	months after the date of enactment of the Fed-
12	eral Prison Oversight Act, the Inspector Gen-
13	eral shall establish methodology and protocols
14	for determining the combined risk score of a
15	covered facility, which—
16	"(i) shall be delivered to the Com-
17	mittee on the Judiciary of the Senate and
18	the Committee on the Judiciary of the
19	House of Representatives; and
20	"(ii) may be based on—
21	"(I) frequency and duration of
22	lockdowns;
23	"(II) availability of program-
24	$\operatorname{ming};$
25	"(III) staffing levels;

1	"(IV) access to adequate physical
2	and mental health resources;
3	"(V) incidences of physical and
4	sexual assault or neglect;
5	"(VI) opportunity to maintain
6	family ties through phone calls, video
7	calls, mail, email, and visitation;
8	"(VII) adequacy of the nutrition
9	provided;
10	"(VIII) amount or frequency of
11	staff discipline cases;
12	"(IX) access of incarcerated peo-
13	ple to—
14	"(aa) legal counsel, includ-
15	ing confidential meetings and
16	communications;
17	"(bb) discovery and other
18	case-related legal materials; and
19	"(ce) the law library at the
20	covered facility; and
21	"(X) other factors as determined
22	by the Inspector General.
23	"(F) Bureau response to report.—
24	"(i) In general.—Not later than 60
25	days after the date on which the Inspector

1	General issues a report under subpara-
2	graph (D), the Bureau shall respond in
3	writing to the inspection report, which
4	shall include a corrective action plan.
5	"(ii) Public availability.—Each
6	response and action plan described in
7	clause (i) shall be made available to the
8	public on the website of the Inspector Gen-
9	eral.
10	"(iii) Compliance with corrective
11	ACTION PLAN.—The Inspector General
12	may conduct additional inspections or in-
13	vestigations, announced or unannounced,
14	to monitor the compliance of the Bureau
15	with a corrective action plan described in
16	clause (i).
17	"(3) Ombudsman.—
18	"(A) In general.—Not later than 1 year
19	after the date of enactment of the Federal Pris-
20	on Oversight Act, the Attorney General shall es-
21	tablish in the Department of Justice an Om-
22	budsman who may—
23	"(i) receive a complaint from an in-
24	carcerated person, a family member, a rep-
25	resentative of an incarcerated person, staff,

1	or others regarding issues that may ad-
2	versely affect the health, safety, welfare, or
3	rights of incarcerated people or staff, in-
4	cluding—
5	"(I) abuse or neglect;
6	"(II) the conditions of confine-
7	ment;
8	"(III) working conditions of
9	staff;
10	"(IV) decisions, administrative
11	actions, or guidance of the Bureau,
12	including those relating to prison
13	staffing;
14	"(V) inaction or omissions by the
15	Bureau, including failure to consider
16	or respond to complaints or grievances
17	by incarcerated people or staff
18	promptly or appropriately;
19	"(VI) policies, rules, or proce-
20	dures of the Bureau, including gross
21	mismanagement; and
22	"(VII) alleged violations of non-
23	criminal law by staff or incarcerated
24	people that may adversely affect the

1	health, safety, welfare, or rights of
2	any person;
3	"(ii) refer a complainant and others
4	to appropriate resources or Federal agen-
5	cies;
6	"(iii) make inquiries and recommend
7	actions to appropriate entities on behalf of
8	a complainant, the Ombudsman, or others;
9	and
10	"(iv) decline to investigate or take any
11	action with respect to any complaint and,
12	in any case in which the Ombudsman de-
13	clines to investigate or take any action,
14	shall notify the complainant in writing of
15	the decision not to investigate or take any
16	action and the reasons for the decision.
17	"(B) Limitations on Authority.—The
18	Ombudsman—
19	"(i) may not investigate—
20	"(I) any complaints relating to
21	the underlying criminal conviction of
22	an incarcerated person;
23	"(II) a complaint from staff that
24	relates to the employment or contrac-
25	tual relationship of the staff member

1	with the Bureau, unless the complaint
2	is related to the health, safety, wel-
3	fare, working conditions, gross mis-
4	management of a covered facility, or
5	rehabilitation of incarcerated people;
6	or
7	"(III) any allegation of criminal
8	or administrative misconduct, as de-
9	scribed in subsection (b)(2), and shall
10	refer any matter covered by sub-
11	section (b)(2) to the Inspector Gen-
12	eral, who may, at the discretion of In-
13	spector General, refer such allegations
14	back to the Ombudsman or the inter-
15	nal affairs office of the appropriate
16	component of the Department of Jus-
17	tice; and
18	"(ii) may not levy any fees for the
19	submission or investigation of complaints.
20	"(C) Decision on the merits of a com-
21	PLAINT.—At the conclusion of an investigation
22	of a complaint, the Ombudsman shall—
23	"(i) render a decision on the merits of
24	each complaint;

1	"(ii) communicate the decision to the
2	complainant, if any, and to the Bureau;
3	and
4	"(iii) state the recommendations and
5	reasoning of the Ombudsman if, in the
6	opinion of the Ombudsman, the Bureau or
7	any employee thereof should—
8	"(I) consider the matter further;
9	"(II) modify or cancel any action;
10	"(III) alter a rule, practice, or
11	ruling;
12	"(IV) explain in detail the ad-
13	ministrative action in question; or
14	"(V) rectify an omission.
15	"(D) ACTIONS FOLLOWING A DECISION BY
16	THE OMBUDSMAN.—
17	"(i) Request for information
18	ABOUT ACTIONS TAKEN.—If the Ombuds-
19	man so requests, the Bureau shall, within
20	the time specified, respond to any inquiry
21	or request for information from the Om-
22	budsman and inform the Ombudsman
23	about any action taken on the rec-
24	ommendations provided by the Ombuds-
25	man or the reasons for not complying with

1	any request for information or rec-
2	ommendations.
3	"(ii) Reporting of continuing
4	ISSUES.—If the Ombudsman believes,
5	based on an investigation conducted by the
6	Ombudsman, that there has been or con-
7	tinues to be a significant health, safety,
8	welfare, working conditions, or rehabilita-
9	tion issue, the Ombudsman shall report the
10	finding to the Attorney General, the Com-
11	mittee on the Judiciary of the Senate, and
12	the Committee on the Judiciary of the
13	House of Representatives.
14	"(iii) Monitoring of internal dis-
15	CIPLINARY ACTIONS OF THE BUREAU.—In
16	the event that the Bureau conducts an in-
17	ternal disciplinary investigation or review
18	of 1 or more staff members of the Bureau
19	as a result of an investigation by the Om-
20	budsman, the Ombudsman may monitor
21	the internal disciplinary action to ensure a
22	fair and objective process.
23	"(4) Inspector general and ombudsman
24	ACCESS TO BUREAU OF PRISONS FACILITIES.—

1	"(A) In general.—Upon demand, in per-
2	son or in writing and with or without prior no-
3	tice, the Inspector General and the Ombudsman
4	shall be granted access to all Bureau facilities,
5	which shall include—
6	"(i) all areas that are used by incar-
7	cerated people, all areas that are accessible
8	to incarcerated people, and access to pro-
9	grams for incarcerated people at any time
10	of day; and
11	"(ii) the opportunity to—
12	"(I) conduct private and con-
13	fidential interviews with any incarcer-
14	ated person, staff, employee represent-
15	ative organization, or other person;
16	and
17	"(II) communicate privately and
18	confidentially, both formally and in-
19	formally, with incarcerated people or
20	staff by telephone, mail, electronic
21	communication, and in person, which
22	shall not be monitored or recorded by
23	or conducted in the presence of staff.

1	"(B) Purpose of visits.—Access to Bu-
2	reau facilities under subparagraph (A) is for
3	the purposes of—
4	"(i) conducting announced or unan-
5	nounced inspections by the Inspector Gen-
6	eral as described in paragraph (2), includ-
7	ing inspections to monitor the compliance
8	of the Bureau with a corrective action plan
9	described in paragraph (2)(F)(i);
10	"(ii) conducting an investigation or
11	other activity by the Ombudsman as de-
12	scribed in paragraph (3); and
13	"(iii) inspecting, viewing,
14	photographing, and video recording all
15	areas of the facility that are used by incar-
16	cerated people or are accessible to incarcer-
17	ated people.
18	"(C) Access to documents.—
19	"(i) In General.—The Inspector
20	General and the Ombudsman have the
21	right to access, inspect, and copy all rel-
22	evant information, records, or documents
23	in the possession or control of the Bureau
24	that either the Inspector General or the
25	Ombudsman considers necessary in an in-

1	spection, investigation, or other activity,
2	and the Bureau shall assist the Inspector
3	General and the Ombudsman in obtaining
4	the necessary releases for those documents
5	that are specifically restricted or privileged
6	for use by the Bureau.
7	"(ii) Production of Records.—
8	Following notification from the Inspector
9	General or the Ombudsman with a written
10	demand for access to Bureau records, the
11	Bureau shall provide access to the re-
12	quested documentation—
13	"(I) not later than 20 business
1314	"(1) not later than 20 business days after receipt of the written re-
14	days after receipt of the written re-
14 15	days after receipt of the written request; or
141516	days after receipt of the written request; or "(II) in the case of records per-
14151617	days after receipt of the written request; or "(II) in the case of records pertaining to the death of an incarcer-
14 15 16 17 18	days after receipt of the written request; or "(II) in the case of records pertaining to the death of an incarcerated person or staff, threats of bodily
14 15 16 17 18	days after receipt of the written request; or "(II) in the case of records pertaining to the death of an incarcerated person or staff, threats of bodily harm including sexual or physical as-
14 15 16 17 18 19 20	days after receipt of the written request; or "(II) in the case of records pertaining to the death of an incarcerated person or staff, threats of bodily harm including sexual or physical assaults, or the denial or delay of nec-
14 15 16 17 18 19 20 21	days after receipt of the written request; or "(II) in the case of records pertaining to the death of an incarcerated person or staff, threats of bodily harm including sexual or physical assaults, or the denial or delay of necessary medical treatment, not later

1	sents to an extension of that time
2	frame.
3	"(D) COORDINATION TO MINIMIZE DISRUP-
4	TION OF OPERATIONS.—The Inspector General
5	and the Ombudsman shall—
6	"(i) work with the Bureau to mini-
7	mize disruption to the operations of the
8	Bureau due to inspections, investigations,
9	or other activity; and
10	"(ii) comply with the security clear-
11	ance processes of the Bureau, provided
12	these processes do not impede the activities
13	described in this subsection.
14	"(5) Confidentiality.—
15	"(A) IN GENERAL.—Correspondence and
16	communication with the Inspector General and
17	the Ombudsman, including communication re-
18	garding an issue described in section 4051 of
19	title 18, United States Code, is confidential and
20	shall be protected as privileged correspondence
21	in the same manner as legal correspondence or
22	communications.
23	"(B) Rules and procedures.—Subject
24	to subparagraph (C), the Inspector General and
25	the Ombudsman shall establish confidentiality

1	rules and procedures for all information main-
2	tained by the respective office to ensure that, to
3	the greatest extent practicable, before, during,
4	or after an investigation—
5	"(i) staff are not aware of the identity
6	of a complainant; and
7	"(ii) other incarcerated people are not
8	aware of the identity of a complainant.
9	"(C) Exception.—The Inspector General
10	and the Ombudsman may disclose identifying
11	information for the sole purpose of carrying out
12	an investigation and as otherwise authorized
13	under section 7(b).
14	"(6) Family advocacy and support serv-
15	ICES.—
16	"(A) FILING COMPLAINTS ON BEHALF OF
17	AN INCARCERATED INDIVIDUAL.—
18	"(i) Online form.—The Ombuds-
19	man shall create a secure online form to be
20	made available on the website of the Om-
21	budsman where the family members,
22	friends, and representatives of incarcerated
23	people can submit complaints and inquiries
24	on issues identified in paragraph (3)(A)(i)

1	on behalf of an individual incarcerated at
2	a covered facility.
3	"(ii) Telephone Hotline.—The
4	Ombudsman shall create a telephone hot-
5	line through which family members,
6	friends, and representatives of incarcerated
7	people can call to file complaints and in-
8	quiries on issues identified in paragraph
9	(3)(A)(i) on behalf of an individual incar-
10	cerated at a covered facility.
11	"(B) FILING COMPLAINTS BY AN INCAR-
12	CERATED INDIVIDUAL.—
13	"(i) Internal private submis-
14	SION.—The Bureau shall provide multiple
15	internal ways for incarcerated individuals
16	in covered facilities to privately submit to
17	the Ombudsman complaints and inquiries
18	on issues identified in paragraph (3)(A)(i).
19	"(ii) Submission via independent
20	ENTITY.—The Bureau shall also provide
21	not less than 1 process for incarcerated in-
22	dividuals in covered facilities to submit
23	complaints and inquiries on issues identi-
24	fied in paragraph (3)(A)(i) to a public or
25	private entity or office that is not part of

1	the Bureau and that is able to receive and
2	immediately forward complaints and in-
3	quiries to the Ombudsman, allowing the in-
4	carcerated individual to remain anonymous
5	upon request.
6	"(C) Determination.—
7	"(i) Confirmation of Receipt.—
8	Not later than 5 business days after sub-
9	mission of a complaint or inquiry under
10	subparagraph (A) or (B), the Ombudsman
11	shall confirm receipt.
12	"(ii) Determination.—Not later
13	than 15 business days after issuing the
14	confirmation under clause (i), the Ombuds-
15	man shall make a determination as to
16	whether any action is warranted and notify
17	the complainant of the determination.
18	"(iii) Statement regarding deci-
19	SION.—If the Ombudsman has determined
20	action is unwarranted under clause (ii), the
21	Ombudsman shall provide a written state-
22	ment explaining the decision to the com-
23	plainant.
24	"(D) Administrative exhaustion.—
25	Nothing in this paragraph shall be construed as

1	a necessary administrative remedy required for
2	exhaustion under section 7(a) of the Civil
3	Rights of Institutionalized Persons Act (42
4	U.S.C. $1997e(a)$).
5	"(7) Prohibition on retaliation.—
6	"(A) In General.—The Bureau and staff
7	of the Bureau shall not discharge, retaliate
8	against, or in any manner discriminate against
9	any complainant or any person or entity that
10	has instituted or caused to be instituted any
11	proceeding, investigation, or inspection under or
12	related to this subsection.
13	"(B) Investigation.—Any alleged dis-
14	charge of, retaliation against, or discrimination
15	against a complainant, entity, or person be-
16	cause of a complaint, investigation, or inspec-
17	tion may be considered by the Ombudsman as
18	an appropriate subject of an investigation or
19	other activity.
20	"(8) Due process protections.—
21	"(A) IN GENERAL.—The Attorney General
22	and the Inspector General shall ensure that im-
23	plementation of this subsection is consistent
24	with section 552a of title 5, United States Code
25	(commonly known as the 'Privacy Act of 1974')

1	and all other applicable laws, and respects ap-
2	propriate due process protections for staff.
3	"(B) Rule of Construction.—Nothing
4	in this paragraph shall be construed to modify,
5	supersede, or otherwise affect the authority of
6	the Inspector General to access all records, re-
7	ports, audits, reviews, documents, papers, rec-
8	ommendations, or other materials, as author-
9	ized by section 6(a).
10	"(9) Percentage of annual appropriation
11	FOR THE BUREAU OF PRISONS.—It is the sense of
12	Congress that the amount allocated to the Inspector
13	General and the Ombudsman to carry out the activi-
14	ties described in this subsection should equal an
15	amount between 0.2 percent and 0.5 percent of the
16	annual appropriation for the Bureau.".
17	(b) Effective Date.—This Act, and the amend-
18	ments made by this Act, shall take effect on the date that
19	is 90 days after the date on which appropriations are
20	made available to the Inspector General of the Depart-
21	ment of Justice and the Department of Justice for the
22	specific purpose of carrying out the provisions of this Act
23	and the amendments made by this Act.